

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

ROBERT BENCHOFF, *pro se*,

Petitioner,

v.

RAYMOND COLLERAN, et al.,

Respondents.

NO. 3:03-CV-0740

(JUDGE CAPUTO)

MEMORANDUM ORDER

Petitioner filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Doc. 1) on May 2, 2003, which the Court referred to Magistrate Judge Blewitt.

Magistrate Judge Blewitt subsequently issued a Report and Recommendation on June 23, 2004. (Doc. 40.) Respondents then submitted Respondent's Objections to Report and Recommendation of Magistrate Judge (Doc. 41), to which Petitioner filed a timely reply (Doc. 51). Pending review of the Report and Recommendation by the Court, Petitioner filed a Motion for Summary Judgement on October 14, 2004 (Doc. 56).

On February 2, 2005, the Court rejected Magistrate Judge Blewitt's Report and Recommendation. (Doc. 65.) The Court determined that Petitioner had presented a mixed petition. *Id.* However, because outright dismissal would have precluded Petitioner from filing a post-exhaustion petition within the statutory period, the Court stayed the proceedings pending Petitioner's exhaustion of his claim regarding his classification as a violent offender. *Id.*

On March 3, 2006, following exhaustion of Petitioner's claims, Petitioner filed a

Motion to Resume Case and a Motion for Summary Judgment (Doc. 84). Petitioner filed a Brief in Support of his Motion for Summary Judgment (Doc. 85) and Respondents filed a Brief in Opposition to Petitioner's Motion for Summary Judgment (Doc. 90). Petitioner then filed a Reply Brief (Doc. 93).

NOW, this 25th day of August, 2006, upon consideration of the filing of Petitioner's Motion for Summary Judgment (Doc. 84), **IT IS HEREBY ORDERED** that Petitioner's Motion for Summary Judgment filed on October 14, 2004 (Doc. 56) is **DENIED as moot**.

/s/ A. Richard Caputo
A. Richard Caputo
United States District Judge